



CAUSE NO. _____

**DNOW L.P. d/b/a
DISTRIBUTIONNOW,
*Plaintiff,***

v.

**TOBY EOFF, JUSTIN COE, RYAN
HIBBETTS, and MICHAEL WHEELER,
*Defendants.***

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IN THE DISTRICT COURT

____ **JUDICIAL DISTRICT**

FORT BEND COUNTY, TEXAS

**PLAINTIFF’S VERIFIED ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION,
PERMANENT INJUNCTION, AND DAMAGES**

DNOW bought the intellectual property, name, goodwill, and other assets of a company for \$170mm. Defendants include former DNOW employees who are using property stolen from DNOW to build a business and threaten DNOW’s existence.

This illegal enterprise must be stopped.

This lawsuit is straightforward. DNOW seeks an end to the conspiracy between Toby Eoff, Justin Coe, Ryan Hibbetts, Michael Wheeler—and likely others—to steal DNOW’s confidential and proprietary information and trade secrets, as well as DNOW’s employees, and use that to build up a new company—Permian Pump & Valve—to compete against DNOW. On their way out the door, Defendants forwarded to themselves dozens of emails containing valuable and protected information that now is being used to raid DNOW’s employees and poach DNOW’s customers.

Defendants had a choice when they decided to leave DNOW. They could have conducted themselves lawfully, taking only their personal property and otherwise relying



on their industry experience and skill to promote a competing enterprise. But Defendants chose a different path. They decided to use the last days of their employment with DNOW to steal DNOW's commercially sensitive and proprietary information that DNOW has been building for years to gain and retain market share and industry relationships. Defendants are using stolen information to compete unfairly with DNOW.

Plaintiff DNOW L.P. d/b/a DistributionNOW ("Plaintiff" or "DNOW") files this Verified Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against Defendants Toby Eoff, Justin Coe, Ryan Hibbetts, and Michael Wheeler. In support of the relief it requests, DNOW shows the Court as follows:

INTRODUCTION

1. The Defendants engaged in an unlawful enterprise include former Executive Vice President Toby Eoff, former Service Manager Justin Coe, former Account Representative Ryan Hibbetts, and former Regional Manager Michael Wheeler. Defendants' unlawful enterprise has one objective: to take DNOW's employees, business, and market share by pirating proprietary, confidential and trade secret information that the Defendants took unlawfully upon their departure from DNOW.

2. Choices have consequences. Consequences should be severe for the egregious behavior exhibited by these Defendants. Defendants have been caught red-handed stealing highly proprietary and sensitive DNOW information, repurposing it for the benefit of a competing entity, Permian Valve Repair, Inc. d/b/a West Texas Petro Services, Permian Pumps & Equipment, and Permian Pump & Valve ("Permian Valve") and for the



benefit of Eoff, who is lining his pockets and enhancing his investment in Permian Valve with information he and others have stolen from DNOW.

DISCOVERY CONTROL PLAN AND CLAIM FOR RELIEF

3. Plaintiff intends to conduct discovery in this lawsuit under Level 3, Rule 190.4, of the TEXAS RULES OF CIVIL PROCEDURE and requests this Court to enter a proper discovery order. This action is not governed by the expedited actions process of TEXAS RULE OF CIVIL PROCEDURE 169.

4. DNOW seeks injunctive relief because there is no adequate remedy at law for the irreparable harm described below. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 47, DNOW also seeks monetary relief in an amount over \$1,000,000.

PARTIES

5. Plaintiff is a Texas limited partnership with its principal offices and place of business located in Houston, Texas.

6. Defendant Justin Coe is an individual whose last known address is 4704 Foerster School Road, Needville, Fort Bend County, Texas 77461. Coe may be served with process at his home, or wherever he may be found.

7. Defendant Toby Eoff is an individual whose last known address is 115 West 6th Street, Odessa, Texas 79761. Eoff may be served with process at his home, or wherever he may be found.

8. Defendant Ryan Hibbetts is an individual whose last known address is 268 Patton Lane, Sandia, Texas 78383. Hibbetts may be served with process at his home, or wherever he may be found.



9. Defendant Michael Wheeler is an individual whose last known address is 3204 CR 217, Winters, Texas, 79567. Wheeler may be served with process at his home, or wherever he may be found.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action by virtue of the relief sought herein, and because the amount in controversy exceeds the minimum jurisdictional requirements of the Court. All parties are residents of Texas, and/or conduct business in Texas, and the Court has personal jurisdiction over Defendants.

11. Venue is proper in Fort Bend County because the relief sought by Plaintiff includes an injunction against Coe, a resident of Fort Bend County, and because all claims arise out of the same transaction, occurrence, or series of transactions or occurrences.

FACTUAL BACKGROUND

A. DNOW's confidential information allows it to maintain a competitive advantage in the Odessa Pumps business.

12. DNOW is a global industry leader that supplies industrial equipment and engineering solutions. It serves energy and industrial markets across the State of Texas. With a network of over 2,200 employees in hundreds of locations in more than 20 counties as well as an online suite of digital channels, DNOW has a legacy business of 160 years offering thousands of stocked items allowing customers to efficiently procure critical parts and supplies that keep their operations up-and-running 24-hours a day, seven (7) days a week. DNOW's corporate offices are in Houston, Texas, where its records and confidential information are stored.



13. In 2015, DNOW purchased Odessa Pumps from Eoff, the then-majority owner (with his wife) of the company, for over \$170 million, the majority of which was attributable to the goodwill of the business and DNOW's ability to continue competing in the market under the Odessa Pumps name with Odessa Pumps' customer base.

14. After this acquisition, DNOW continued to operate Odessa Pumps, providing full-service pump solutions in Texas, Oklahoma, Louisiana, and New Mexico. Odessa Pumps' products and services are used for many applications, including oilfield services, groundwater pumping, treatment and distribution, booster stations, and water plants.

15. DNOW not only sells and rents pump equipment in the Odessa Pumps business, but also provides services such as engineering, repair, maintenance, and machining.

16. In providing its products and services, Odessa Pumps devotes significant resources and time to researching customer needs, creating market plans, developing pricing strategies, and maintaining customer goodwill and relationships. As part of these efforts, Odessa Pumps has developed trade-secret, confidential, and commercially sensitive information that is critical to the success of the business. These assets were developed over time and formed a significant part of the value that DNOW acquired when it purchased Odessa Pumps for \$170 million dollars.

17. Odessa Pumps generates substantial sales and service business for DNOW. This success depends heavily on the use of confidential sales data, service data, and information related to customer needs and pricing, all of which are generated and owned by DNOW and used by DNOW's personnel to maintain a competitive advantage.



18. One of DNOW's most reliable methods for obtaining new business and maintaining current business is to track its activities with prior customers. This is because a significant part of DNOW's business involves the service, upgrade, or replacement of equipment that belongs to DNOW's existing customers. As a result, DNOW derives a competitive advantage using internal data regarding previous orders, sales, and other customer information. Such information allows DNOW to identify current and future prospective business opportunities, as well as develop business plans according to customer needs and market trends.

19. Because DNOW relies on this data and other valuable business information to stay competitive, DNOW takes significant efforts to protect its confidential and trade secret information. This includes but is not limited to customer lists, profit and loss data, commission data, margins, customer purchase prices, supplier prices, research strategies and formulae, customer preferences and needs, salary information, price lists, and technical information.

20. Such information is stored on DNOW's password-protected computer systems to prevent open use and sharing of the information. DNOW does not disseminate this information to personnel who have no need to know it. Further, DNOW requires its employees to enter Employee Invention and Confidential Information Agreements ("Confidential Information Agreement") not to disclose its confidential information, and this obligation specifically extends beyond the end of employment with DNOW. Every year, employees must reaffirm their agreement to be bound by DNOW's confidentiality obligations through Code of Conduct training.



21. DNOW also requires its employees to attend yearly training with respect to DNOW's Code of Conduct. As recently as February 28, 2021, Eoff affirmed, acknowledged and agreed to comply with DNOW's Code of Conduct. The Code of Conduct provides that:

“Employees with roles that require collecting, processing, using, or retaining confidential information (belonging to DNOW or a third party) must ensure that the confidential information is protected. Confidential information must never be shared with anyone inside or outside of DNOW who does not have a business need to know the information ... Our obligation to protect confidential information continues even after we leave DNOW.”

22. The Code of Conduct specifies that Confidential Information includes trade secrets; intellectual property; business, marketing, and service plans; technical information; customer information, including lists; financial information; human resources information; contractual obligations; employee information; and litigation information.

23. Defendants Coe, Hibbetts and Wheeler also acknowledged DNOW's Confidential Information Agreement and Code of Conduct, on the following dates:

Former Employee	Date of Execution – Confidential Information Agreement	Date of Execution – 2022 Code of Conduct
Justin Coe	August 28, 2015	March 7, 2022
Ryan Hibbetts	August 28, 2015	February 7, 2022
Michael Wheeler	August 18, 2015	March 7, 2022



B. Coe and Hibbetts Take DNOW's Proprietary and Confidential Information.

24. On or around June 13, 2022, five DNOW employees—including Hibbetts and Coe—resigned without notice to go to work for one of DNOW's competitors, Permian Valve. These were not the first DNOW employees to leave for Permian Valve, but a forensic investigation revealed they were at the center of a vast conspiracy to destroy DNOW's business and create a competing business on the back of DNOW's confidential information.

25. By virtue of their positions, Coe and Hibbetts had a deep knowledge of all of DNOW's operations and customer relationships. This knowledge included specific knowledge related to DNOW's customer contacts and pricing structure.

26. The forensics investigation has revealed that the resignations of Coe (a Service Manager) and Hibbetts (an Account Representative) are only the most recent examples of a pattern of theft of DNOW's confidential information for the benefit of Permian Valve.

27. For example, in the days leading up to his resignation, Coe forwarded multiple emails to his personal e-mail address that contained highly proprietary and confidential DNOW information including customer pricing and contact information, delivery location screenshots, databooks, customer entity lists, product pictures, and engineering drawings. This information included, for one of Odessa Pumps' largest customers, a complete customer contact list with phone numbers and addresses, covering several operating units.



28. Most curiously, Coe forwarded emails to himself that he neither sent nor received—they had only been sent to Hibbetts. In other words, Coe (who typically did not work with Hibbetts) was assigned the task of identifying key information not only from his own accounts but from those of his co-conspirators, and in taking that information for use at Permian Valve.

29. It wasn't just Coe, though. One day before he quit, Hibbetts forwarded himself a *staggering seventy-one separate emails with attachments* to his personal email address. These emails and attachments contain highly proprietary and confidential DNOW information including customer quotes, pricing information, customer name and contact information, DNOW training materials, DNOW product and service information, purchase orders, and proposals. There is no legitimate business purpose for a departing employee to forward himself vast amounts of confidential information like this.

30. The investigation, however, has revealed the conspiracy dated back even further, to a high-ranking employee's—Eoff's—alleged “retirement,” which turned out to be a front for his own desires to use individuals like Coe to line his own pockets and advance the business interests of a direct competitor, Permian Valve.

C. Eoff prepares to retire from DNOW in April 2022 and begins conspiring to poach DNOW's employees and build up Permian Valve as the new Odessa Pumps.

31. DNOW hired Eoff as a Vice President in 2015 to continue running the Odessa Pumps business after he sold it to DNOW for \$170 million. He was promoted to President of DNOW's Process Solutions business segment in 2016 and, later, an Executive



Vice President position in 2021. In these roles, he reported directly to DNOW's Chief Executive Officer while overseeing several DNOW businesses including Odessa Pumps.

32. By the time Eoff retired in April 2022, he had deep knowledge of all aspects of DNOW's business. His tenure not only gave him visibility into the role of DNOW's employees, but also strategic business decisions made by the upper echelons of DNOW's management. In particular, Eoff was intimately familiar with the Odessa Pumps business that he sold to DNOW and continued to manage for more than six years as a DNOW employee. Before retiring, and while still employed by DNOW, Eoff began conspiring to raid employees from DNOW to join Permian Valve, a new business venture funded by Eoff.

33. Specifically, on or around February 15, 2022, Eoff met Clayton Kenworthy to discuss DNOW's operations and employees and obtain his help in targeting and recruiting DNOW employees to join Permian Valve.

34. A week later, on or around February 22, 2022, Kenworthy and Eoff met again in person to, upon information and belief, further discuss Eoff's plan to "retire" from DNOW, which actually was a cover for his plan to steal employees from DNOW to join Permian Valve, and what confidential information Eoff and his co-conspirators could use to assist Permian Valve in hiring away current DNOW employees and stealing away current DNOW business in order to reap new financial benefit through his involvement in Permian Valve's growth and success.

35. On April 1, 2022, Eoff "retired." Although Eoff actually had been in negotiations for months with DNOW's Management Team to stay on in a consulting role



to oversee relationships and provide business guidance as he transitioned away from full-time employment with DNOW, the day before his “retirement,” Eoff changed his tune. Instead, Eoff notified DNOW Management that he would not be staying on in a consulting role as he did not want to be limited by non-compete, non-solicit obligations in furtherance of potential investment opportunities—in other words, Eoff wanted to capitalize on the confidential information he had squirreled away and planned to continue to obtain from DNOW to compete directly against his former company.

36. On his way out the door, Eoff sent himself emails containing highly sensitive DNOW business information from his DNOW email account to his personal email account.¹ These emails include some of DNOW’s most sensitive and confidential business information relating to the Odessa Pumps business. Moreover, the information Eoff stole was a blueprint on how to pilfer DNOW’s employees and customers to enrich himself and Permian Valve.

37. At 9:23 a.m. on March 31, 2022, the day before his “retirement” Eoff emailed to himself a .pdf entitled “HFM Process Solutions Manager’s Report December 2021.” That file details highly confidential and proprietary DNOW information, including a complete year-to-date, organizational snapshot of DNOW’s entire Process Solutions Segment. It shows actual vs. budgeted year-to-date sales, base margin percentages and amounts, operating incomes, back logged amounts, accounts receivable, inventory

¹ The emails and attachments referenced in this Petition are not included as Exhibits because they contain trade secret and/or confidential and proprietary information belonging to DNOW; however, the emails and attachments referenced in this Petition will be available to the Court for *in camera* inspection at the hearing on Plaintiff’s Application for Temporary Restraining Order and Temporary Injunction.



statistics, invoices amounts and averages, year-to-date quote numbers and amounts, service revenues, and booking reports. All of this is valuable, confidential information that DNOW does not widely distribute and that can be used to compete against DNOW and harm DNOW's competitive position in the market.

38. At 4:53 a.m. on the day Eoff left, he emailed himself an Excel spreadsheet entitled "2022 02 Commissions." This spreadsheet details highly confidential and/or trade secret DNOW-owned information, including, but not limited to, a list of external sales employees, total sales amounts per employee, gross profit amounts, commission amounts paid out, revenue totals, location operating incomes, customer names, and salary information. It provides exactly the information necessary for a DNOW competitor—*i.e.*, Permian Valve—to steal DNOW's employees and know-how. The information in that spreadsheet is only shared with a limited number of individuals within DNOW, including DNOW's controller, President of the Process Solutions Segment, and Chief Executive Officer.

39. Eight minutes later, at 5:01 a.m., Eoff continued his theft. He emailed himself yet another Excel spreadsheet, this one named "Odessa Pumps & Equipment Inc. Manager's Report February 2022." This spreadsheet also details highly confidential and trade secret DNOW-owned information. It has ten data tabs, each providing detailed and confidential organizational information. For example, the first tab although labelled "February 2021" contains a complete recap of February 2022 and year-to-date sales and revenue data for all Odessa Pumps branch locations, including revenue totals, profit amounts and margins, inventory volume, and backlog amounts owed.



40. The tab labeled “ROA” provides detailed financial information, including net income received and the value of all held assets by branch location. This information would allow a competitor (Permian Valve) to identify which branch locations were most profitable to competitively target a specific region.

41. The tab labeled “Invoices,” provides the number of outstanding company invoices, the monthly average of all invoices, and the total value of all invoices for all Odessa Pumps branch locations. The tab labelled “Inventory,” provides detailed data including in-transit inventory, total inventory, and inventory trends and statistics. The tab labeled “Order Booking,” outlines by branch location, order amounts and averages. The tab labeled “2022 Budget Numbers” details not only what Odessa Pumps’ actual revenue totals are by branch location, but what Odessa Pumps’ budget is for the future both from a revenue standpoint and from a profitability standpoint.

42. The foregoing information within the “Odessa Pumps & Equipment Inc. Manager’s Report February 2022,” outlines market opportunities by geographic region and in the hands of a competitor make up a blueprint for competitive operations and processes—in the hands of a competitor, it would be devastating to DNOW.

43. None of this information is shared outside of DNOW’s leadership team, which is comprised of a limited number of individuals. Notably, this information relates to business units that Eoff had no responsibility for at the time of his “retirement.” In other words, the only reason for Eoff to access these files was to forward them to himself for the benefit of his investment in Permian Valve. Moreover, in the hands of a competitor such as Permian Valve, this information would allow it to calculate an employee’s salary in



order to lure him or her away from employment at DNOW with the offer of a higher salary, make inroads on customer and vendor relationships, show focal areas for growth and opportunities, and be a competitive advantage to anyone seeking to create market share against DNOW. Stated another way, Eoff snuck into the DNOW locker room and stole DNOW's playbook.

44. In addition to this blatant misappropriation of confidential information, Eoff used this information to begin pilfering DNOW's employees. *The same day Eoff retired, seven other employees resigned without notice to work for Permian Valve.* These employees included Wheeler (Regional Manager), Brian Madison (Branch Manager), Andrea Harbin (Office Manager), Jeremy Gilliam (Service Manager), Francisco Flores (Service Technician), Clyde McGee (Shop Mechanic), and Bo Young (Branch Manager). These employees were based out of Amarillo, Odessa, San Angelo, and Houston.

45. But it didn't stop there. A short time later, three more employees resigned without notice to work for Permian Valve. Those employees were key members of DNOW and included Ryan Wheeler (Account Representative), Jacob Lewallen (Regional Sales Manager), and Russell Dauphin (Sales Director), based out of Odessa, Irving, and Boerne, Texas, respectively.

46. This systematic poaching of DNOW's representatives was designed to ensure Permian Valve could win access to DNOW's customers in different locations across Texas.

47. Eoff's campaign of poaching DNOW's employees continued in earnest after his "retirement." In truth, Eoff never intended to ride off into the sunset, but to use



DNOW's information as an advantage for Permian Valve to line his own pockets and produce financial gain for himself.

D. Wheeler Follows Eoff's Lead, Taking DNOW's Confidential and Proprietary Information Before Resigning to Work for Permian Valve.

48. Forensic examination has revealed that Wheeler filled a Dropbox account with data that included confidential DNOW information and which was last accessed on March 31, 2022. DNOW policy does not condone the use of Dropbox for work sharing purposes. In any event, Wheeler's activities, as described below, are a clear violation of his obligations to protect DNOW's confidential information.

49. Right before he quit, Wheeler accessed two documents within the Dropbox. The first, an Excel spreadsheet named "2021 12 Financials – Preliminary – Western," contains highly detailed and confidential DNOW financial information. The second, an Excel spreadsheet entitled "Employee List with Details," is a list of all DNOW employees and includes employee names, job titles, length of service, and manager. This spreadsheet also includes an interoffice ranking for Wheeler's reporting structure in the days leading up to his departure.

50. Additionally, Wheeler printed an Excel spreadsheet entitled "March_2022" seven (7) minutes *after* he submitted his resignation. This spreadsheet details all products bought and sold throughout Wheeler's reporting structure for the month of March 2022. This critical piece of confidential information, placed in the hands of a competitor like Permian Valve, is akin to handing Permian Valve the keys to DNOW's castle.



E. Permian Valve Continues to Solicit DNOW's Employees Using DNOW's Confidential and Proprietary Information.

51. Apparently unsatisfied with (and unsatiated by) his first round of raids, Eoff has continued to openly steal away DNOW employees for Permian Valve using the confidential and proprietary information he stole from DNOW. The confidential commission, salary, and other compensation information he stole has enabled this nefarious conduct.

52. In June 2022, *twelve more* DNOW employees resigned without notice to immediately go to work for Permian Valve, including nine employees from Odessa Pumps' San Angelo branch. The other three departing employees worked in Amarillo, Odessa, and Oklahoma City.

53. Eoff has repeatedly put the stolen DNOW information to use. For example, he has directed Permian Valve to send unsolicited offers of employment to current DNOW employees, conveniently offering them more compensation than they are currently making (compensation information he and Permian Valve only know because they stole it from DNOW). These offers also have led to the false rumors that DNOW is trying to sell the Odessa Pumps brand and that its San Angelo branch is closed for business, which undermines the goodwill that DNOW had purchased from Eoff only a few years earlier.

CAUSES OF ACTION

Count I – Conspiracy

54. DNOW incorporates and re-alleges in full the preceding paragraphs of this Petition.



55. Defendants, and all others in concert, were members of a combination of two or more persons, the object of which was to unlawfully take DNOW's confidential information. In a meeting of the minds, Defendants knew of and agreed upon the object of this combination and the course of action to be taken.

56. Defendants committed unlawful, overt acts to further this combination by: (1) misappropriating DNOW's trade secrets; and (2) breaching or inducing the breach of their fiduciary duties to DNOW.

57. As set forth below, DNOW seeks injunctive relief against Defendants.

58. As a direct and proximate result of this conspiracy, DNOW suffered injuries, including, but not limited to, actual damages, direct damages, indirect damages, incidental damages, consequential damages, special damages, lost profits, and irreparable damage to DNOW's goodwill, business reputation, confidential information, trade secrets, employee relationships, and customer relationships.

Count II – Misappropriation of Trade Secrets (Texas Uniform Trade Secrets Act)

59. DNOW incorporates and re-alleges in full the preceding paragraphs of this Petition.

60. Defendants took DNOW's confidential information, and there is a substantial likelihood that Defendants have and will continue to use such confidential information for the benefit of Defendants and Permian Valve in order to siphon employees, customers, and revenue away from DNOW.



61. Defendants' confidential information constitutes a "trade secret" under the Texas Uniform Trade Secrets Act ("TUTSA"). *See* TEX. CIV. PRAC. & REM. CODE § 135A.002.

62. DNOW took reasonable steps to keep its information secret by limiting the information to only those within DNOW with a legitimate business right and need to know, not disclosing such information outside of DNOW, and through a variety of additional methods. Moreover, the information has actual and potential independent economic value to third parties because it is not generally known and not readily ascertainable by proper means.

63. Defendants "misappropriated" DNOW's trade secret information by acquiring it through "improper means," as such terms have been defined by TUTSA. *See* TEX. CIV. PRAC. & REM. CODE § 134A.002.

64. Defendants' misappropriation of DNOW's confidential trade secret and proprietary information has directly and proximately caused, and—unless enjoined—will continue to cause DNOW irreparable harm for which there exists no adequate remedy at law.

65. Defendants' misappropriation of DNOW's confidential, trade secret, and proprietary information has irreparably damaged, and will continue to irreparably damage, DNOW in an amount in excess of the jurisdictional limits of the Court. Such misappropriation will personally benefit Defendant Eoff and Defendants Coe, Hibbetts, and Wheeler's new employer, Permian Valve. Based on Defendants' misappropriation of this information, DNOW seeks all actual damages, including Defendants' unjust



enrichment, resulting from the misappropriation, as well as exemplary damages. DNOW also seeks a temporary restraining order pursuant to Texas Civil Practice & Remedies Code § 134A.003 prohibiting Defendants from further use of DNOW's confidential, trade secret, and proprietary information. Additionally, DNOW also asks that the Court disgorge any profits and/or compensation obtained by Defendants as a result of the misappropriation and provide such profits and/or compensation to DNOW.

66. DNOW further seeks its reasonable and necessary attorneys' fees and court costs as provided under Chapter 134A.005 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

Count III – Breach of Fiduciary Duty

67. DNOW incorporates and re-alleges in full the preceding paragraphs in this Petition.

68. During employment and after termination, employees owe a fiduciary duty to their employer and are obligated not to divulge their employer's confidential information or use such information for personal gain. *Johnson v. Brewer & Pritchard*, 73 S.W.3d 193, 201-2 (Tex. 2002); *See, e.g., Hyde Corp. v. Huffines*, 314 S.W.2d 763, 770 (Tex. 1958) (an injured employer is not required to rely upon an express agreement to hold trade secrets in confidence). Although employees can use general knowledge, skills, and experience gained through their employment, they cannot use their former employer's property or confidential information to facilitate competition with the former employer. *Johnson*, 73 S.W.3d at 201-2.



69. In order to show a breach of fiduciary duty, a plaintiff must show that: (1) the plaintiff and defendant had a fiduciary duty; (2) the defendant breached his fiduciary duty to the plaintiff; and (3) the defendant's breach resulted in injury to the plaintiff or a benefit to the defendant. *Burrow v. Arce*, 997 S.W.2d 229, 237 (Tex. 1999); *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 160 S.W.2d 509, 513-14 (Tex. 1942).

70. Defendants were executive, managerial, and high-level employees of DNOW and owed DNOW fiduciary duties as a matter of law. These duties are ongoing and continuing. Eoff solicited the employment of DNOW employees to work for Permian Valve while he was still employed at DNOW. Further, Defendants used or disclosed DNOW's trade secrets and confidential information in violation of their fiduciary duties to DNOW, and DNOW has suffered damages, which are within the jurisdictional limits of this Court. Furthermore, Defendants intentionally violated fiduciary duties to DNOW, and DNOW is entitled to an award of forfeiture and disgorgement relief (their compensation at DNOW and now at Permian Valve, if applicable) and exemplary damages for this breach.

Count IV – Breach of Contract

71. DNOW incorporates and re-alleges in full the preceding paragraphs of this Petition.

72. Defendants were subject to confidentiality agreements with DNOW, which were valid and enforceable agreements.

73. Defendants have breached their confidentiality agreements by using and/or disclosing DNOW's trade secrets and confidential information.

74. Defendants' breaches have caused harm to DNOW.



75. DNOW further seeks its reasonable and necessary attorneys' fees under Chapter 38 of the Texas Civil Practice & Remedies Code.

Count V – Harmful Access to Computer

76. DNOW incorporates and re-alleges in full the preceding paragraphs of this Petition.

77. Defendants accessed and retrieved confidential, proprietary, and trade secret information from DNOW's computer system with the intent to injure them and without its effective consent.

78. Defendants did not obtain the effective consent of DNOW to use its computer or computer system because Defendants used DNOW's computer for purposes other than that for which any consent may have been given by DNOW. DNOW never gave Defendants consent to use its computers for the purpose of obtaining, misappropriating or converting its or others' confidential, identifying, proprietary, private or trade secret information for their own benefit or for the benefit of others. As a result of Defendants' actions, Defendants have violated Chapter 33 of the TEXAS PENAL CODE.

79. DNOW has been injured as a result of Defendants' violation of the TEXAS PENAL CODE. By Defendants' own conduct in knowingly accessing DNOW's computer, computer network, or computer system without DNOW's effective consent, DNOW has suffered and will continue to suffer damages.

Count VI – Texas Theft Liability Act

80. DNOW incorporates and re-alleges in full the preceding paragraphs of this Petition.



81. Defendants committed civil theft pursuant to the Texas THEFT LIABILITY ACT (“TTLA”), TEXAS CIVIL PRACTICE & REMEDIES CODE § 134.01, *et seq.*, by stealing confidential information and trade secrets from DNOW.

82. Under the TTLA, a victim of “theft” may recover its actual damages, additional damages, court costs, and attorneys’ fees.

83. Plaintiff seeks all relief afforded by the TTLA. *See* TEX. CIV. PRAC. & REM. CODE § 134.005.

84. Defendants’ conduct constitutes “theft” as described in the TTLA.

***Application for Temporary Restraining Order,
Temporary Injunction, and Permanent Injunction***

85. DNOW incorporates and re-alleges in full the preceding paragraphs of this Petition.

86. DNOW is entitled to the entry of a temporary restraining order (“TRO”), a temporary injunction (“TI”), and permanent injunction (“PI”) against Defendants under Texas law, including TEXAS CIVIL PRACTICE & REMEDIES CODE § 134A.003.

87. A temporary restraining order is necessary to stop Defendants from furthering their conspiracy to steal DNOW’s confidential information and pilfer DNOW’s employees.

88. The ongoing and threatened injury is immediate and will directly and proximately cause irreparable harm to DNOW’s employment relationships, confidential information, goodwill, and business reputation. The total loss to DNOW cannot be



accurately measured at this time and extends far beyond the direct costs of hiring and training replacement employees. This entitles DNOW to injunctive relief.

89. DNOW's verified pleading demonstrates that: (1) Defendants have engaged in wrongful acts that provide DNOW with causes of action; (2) DNOW has a probable right to relief; and (3) absent injunctive relief, DNOW will suffer irreparable harm and probable injury for which there is no adequate remedy at law.

90. DNOW is willing to post bond as, and if, deemed necessary by the Court.

A. Wrongful Acts.

91. As shown in the paragraphs above and attached documents, Defendants have obtained through improper means and misappropriated highly confidential and trade secret DNOW information in violation of Texas state law. Defendants have also stolen DNOW employees using that confidential, proprietary, and trade secret information.

B. Probable Right to Relief.

92. DNOW is entitled to injunctive relief because it can demonstrate a probable right to relief upon final hearing. *See Sun v. Whitaker*, 424 S.W.2d 216, 218 (Tex. 1968). DNOW need not prove at this stage that it will ultimately prevail at trial, nor does this element invite the Court to predict the ultimate outcome. *See Intercontinental Terminals Co. v. Voapk N. Am., Inc.*, 354 S.W.3d 887, 897 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Instead, a “probable right of recovery” is a legal term of art that simply indicates that an applicant has pleaded a cause of action and presented “some evidence that tends to sustain it.” *Id.*



93. As set forth above, DNOW has asserted against Defendants claims of misappropriation of trade secrets, breach of contract, conspiracy, civil theft, breach of fiduciary duty, and harmful access by computer. The verified facts confirm that Defendants remain in possession and control of confidential, trade secret, and proprietary information of DNOW.

C. Probable Irreparable Injury for Which There is No Adequate Remedy at Law.

94. Injunctive relief is appropriate where a plaintiff will suffer probable injury that is imminent, irreparable, and for which there is no adequate remedy at law. *See Henderson v. KRTS, Inc.*, 822 S.W.2d 769, 773 (Tex. App.—Houston [1st Dist.] 1992, no writ). An irreparable injury is an injury that cannot be adequately compensated in damages or measured by an exact pecuniary standard. *See Williams v. Compressor Eng'g Corp.*, 704 S.W.2d 469, 472 (Tex. App.—Houston [14th Dist.] 1986, writ ref'd n.r.e.). By the same token, if damages cannot be calculated with relative precision for the complained-of harm, there is not adequate remedy at law. *See Tex. Indust. Gas. v. Phoenix Metallurgical Corp.*, 828 S.W.2d 529, 533 (Tex. App.—Houston [1st Dist.] 1992, no writ).

95. Eoff is funding and investing in Permian Valve; Coe, Hibbetts, and Wheeler are working at Permian Valve and are directly involved in the ongoing use of DNOW confidential information. At this very moment, while armed with DNOW's confidential, proprietary, and trade secret information Eoff and the other Defendants are intentionally attempting to cause harm to DNOW. Texas law unequivocally treats this situation as satisfying the test for imminent and irreparable harm. *See T-N-T Motorsports, Inc. v.*



Hennessy Motorsports, Inc., 965 S.W.2d 18, 24 (Tex. App.—Houston [1st Dist.] 1998, pet. dismissed) (“Injunctive relief is recognized as a proper remedy to protect confidential information and trade secrets.”) (internal citation omitted). Indeed, “[w]hen a defendant possesses trade secrets and is in a position to use them, harm to the trade secret owner may be presumed.” *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200 (Tex. App.—Fort Worth 2005, no pet.). “The threatened disclosure of trade secrets constitutes irreparable injury as a matter of law.” *Id.* (citing *Williams*, 704 S.W.2d at 471). If Defendants are not restrained, Defendants have the ability to continue to pilfer DNOW’s employees, thereby positioning Defendants and Permian Valve to improperly secure work from DNOW’s customers and wrongfully hamper DNOW’s ability to compete effectively for the same work.

96. Unless immediately restrained, Defendants will cause irreparable harm to DNOW for which there is no adequate remedy at law, including (without limitation) loss of confidential information, goodwill, and business reputation. *See Sharma v. Vinmar Int’l, Ltd.*, 231 S.W.3d 405, 427 (Tex. App.—Houston [14th Dist.] 207, no pet.). If Defendants are not enjoined, they will continue to pilfer DNOW’s employees and use DNOW’s confidential information. The dollar value harm that Defendants’ continued misconduct will cause to DNOW is not easily measured.

97. The balance of equities is served by a temporary restraining order, temporary injunction, and at the appropriate time, a permanent injunction, as it protects DNOW’s employment relationships, confidential information, goodwill, and business reputation.



98. A temporary restraining order and temporary injunction is necessary to preserve the status quo between the parties pending a trial on the merits.

D. Request for Injunctive Relief.

99. DNOW requests that the Court grant a TRO and/or Temporary Injunction enjoining and restraining Defendants as follows:

- a. Defendants, and anyone in concert with them, are prohibited from, directly or indirectly, disclosing or using any confidential or proprietary information of, involving or relating to DNOW, or its affiliates (including Odessa Pumps).
- b. Within 3 days of the Court's order, the Defendants must return to DNOW all documents in their possession, custody, or control that contain confidential information or trade secrets belonging to DNOW and its affiliates.
- c. Within 7 days of the Court's order, Defendants must make all personal and Permian Pump and Valve electronic storage devices (*i.e.*, laptops, cell phones, tablets, etc.) available for forensic imaging by a third-party neutral forensic examiner.
- d. Within 7 days of the Court's order, Wheeler must provide his username, password, and any other information required to access his personal DropBox account for forensic imaging by a third-party neutral forensic examiner.
- e. Within 7 days of the Court's order, Coe must provide his username, password, and any other information required to access his personal Gmail account for forensic imaging by a third-party neutral forensic examiner.
- f. Within 7 days of the Court's order, Hibbetts must provide his username, password, and any other information required to access his personal Hotmail account for forensic imaging by a third-party neutral forensic examiner.
- g. Within 7 days of the Court's order, Eoffs must provide his username, password, and any other information required to access his personal "eoffs.com" email account for forensic imaging by a third-party neutral forensic examiner.
- h. Defendants must preserve all communications between themselves or with third parties, including Permian Pump and Valve (whether text messages,



emails, or other forms of electronic messaging, including metadata) as of January 1, 2021 until further Order of this Court.

100. Because of the brazen, remorseless conduct of Defendants (particularly Eoff) and the obvious intent to inflict damage on DNOW, DNOW also seeks an order requiring that Defendants, and anyone in concert with them, immediately to stop all work for Permian Valve and its related companies, including any consulting work or work as an independent contractor or employee, or in the alternative, requiring Defendants to cease, directly or indirectly, the solicitation of any DNOW employee for employment at Permian Valve. Additionally, DNOW seeks an order prohibiting DNOW from soliciting DNOW customers.

101. DNOW further seeks a temporary and permanent injunction that enjoins Defendants from acts to be determined based on the development of evidence through discovery and after presentation of evidence to the finder of fact.

PUNITIVE DAMAGES

102. DNOW incorporates and re-alleges in full the preceding paragraphs of this Petition.

103. Defendants have acted with the specific intent to cause substantial injury to DNOW. Therefore, DNOW is entitled to an award of exemplary damages in an amount in excess of this Court's minimum jurisdictional limits under Texas law, including TEXAS CIVIL PRACTICE & REMEDIES CODE § 134A.004.



CONDITIONS PRECEDENT

104. All conditions precedent to the recovery of the relief requested by DNOW herein have occurred.

JURY DEMAND

105. DNOW demands a trial by jury on all claims at issue in this action, and has tendered the applicable jury fee, pursuant to Rule 216 of the TEXAS RULES OF CIVIL PROCEDURE.

PRAYER FOR RELIEF

Plaintiff DNOW L.P. d/b/a DistributionNOW requests that Defendants be cited to appear herein and, upon trial hereof, DNOW recover judgment against Defendants as follows:

- a. That the Court enter a temporary restraining order enjoining Defendants as set forth above;
- b. That Defendants be cited to appear at a hearing and show cause why a temporary injunction should not be issued according to the terms requested herein;
- c. That the Court, upon hearing, enter a temporary injunction, thereafter to be made permanent;
- d. That DNOW have judgment against Defendants for actual damages and exemplary damages;
- e. That DNOW have judgment against Defendants for its attorneys' fees, costs of court, and prejudgment and post-judgment interest as allowed by law; and
- f. That DNOW recover such additional relief, at law or in equity, to which DNOW may be justly entitled.



Respectfully submitted,

THE WEST LAW FIRM

S. SCOTT WEST

SBN: 21206920

scott@westfirm.com

MADDISON M. WEST

SBN: 24104633

maddison@westfirm.com

6908 BRISBANE COURT

THIRD FLOOR

SUGAR LAND, TEXAS 77479

PHONE: (281) 277-1500

FAX: (281) 277-1505

E-SERVICE: WestTeam@westfirm.com

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

Christopher E. Moore

Texas Bar No. 24052778

christopher.moore@ogletree.com

Scott McLaughlin

Texas Bar No. 00791234

Brooke Jones

Texas Bar No. 24107537

One Allen Center

500 Dallas Street, Suite 3000

Houston, Texas 77002

Phone: (713) 655-0855

Fax: (713) 655-0020



**AHMAD, ZAVITSANOS,
ANAIPAKOS,
ALAVI & MENSING P.C.**

John Zavitsanos
State Bar No. 2251650
jzavitsanos@azalaw.com

Jason S. McManis
State Bar No. 24088032
jmcmannis@azalaw.com

Louis Liao
lliao@azalaw.com
State Bar No. 24109471
1221 McKinney, Suite 2500
Houston, Texas 77010
Phone: 713.655.1101
Fax: 713.655.0062

ATTORNEYS FOR PLAINTIFF

STATE OF TEXAS

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COUNTY OF FORT BEND

VERIFICATION

I, Clent Rawlinson, hereby declare and state as follows:

1. "My name is Clent Rawlinson. I am over the age of twenty-one (21) and I am fully competent to make this declaration.
2. I am currently the Senior Vice President of Process Solutions for DNOW L.P. d/b/a DISTRIBUTIONNOW ("DNOW"). I am capable of making this verification. I have read DNOW's Original Verified Petition and Application for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction.
3. All of the Facts as set forth in the Factual Background of this Petition are true and correct and are based upon my personal knowledge and corporate knowledge of DNOW. I declare under penalty of perjury that the foregoing facts are true and correct."

Executed under penalty of perjury on June 21st, 2022.



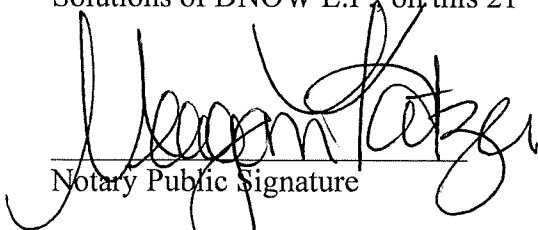
Clent Rawlinson
Senior Vice President, Process Solutions

STATE OF TEXAS

§
§

COUNTY OF HARRIS

Subscribed and sworn to before me by Clent Rawlinson, Senior Vice President of Process Solutions of DNOW L.P., on this 21st day of June, 2022.


Notary Public Signature

My commission expires:

6/27/2023

